

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16219 of 2008

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M/S Rambriksha Singh, a partnership firm through its partner Sri Sheo Shankar Prasad Singh, Son of late Rambriksh Singh, resident of Jaiprakash Nagar, Karma Road, Aurangabad, P.S. & Distt.- Aurngabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, National Highway Wing, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, National Highway Circle, Road Construction Department, Government of Bihar, Patna.
5. The Executive Engineer, National Highway Division, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate. .

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 5.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 05-01-2015 After some arguments, learned counsel for the

petitioner , as with regard to the following relief prayed in this writ

application:

"1.(i) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Certiorari for quashing the office order no. 16 of 2008 issued under the signature of the respondent Executive Engineer vide memo no. 319 dated 25.4.2008 (as contained in Annexure-15) whereby the contract awarded to the petitioner vide agreement no. 17F2 of 2006-07 has been rescinded in purported exercise of power under Clause 3(a) of the agreement and the entire security money deposited by the petitioner has been forfeited. It has also been ordered that the additional cost incurred on completion of the balance work will be realized from the petitioner under Clause 3(c) of the agreement.

(ii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of mandamus directing the respondents to pay the admitted amount of dues for the work done by the petitioner and also to refund the amount of security deposit and other deductions which has been made by the

department on account of delay completion of the work alongwith reasonable interest thereon as there was no fault on the part of the petitioner in not completing the work within the stipulated period as provided in the contract.

(iii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondents to pay the actual price of bitumen utilized by the petitioner in course of execution of the works contract and further to direct the respondents to sanction and approved the revised estimate for the balance work left by the petitioner as per the assurance given before the contract was signed between the parties and accordingly allow the petitioner to complete the balance work within reasonable time."

seeks permission to withdraw this writ application in order to enable the petitioner to seek arbitration of the works contract.

Mr. Raj Kishore Prasad, learned counsel for the petitioner, while making such prayer, however, has drawn attention of this Court that this writ application has remained pending since 10.11.2008 and, therefore, if the respondents insist that such arbitration will be barred by limitation, the petitioner will be left without any remedy.

Learned counsel for the State assures that the issue of limitation shall not be pressed by the respondents before the arbitral Tribunal.

In that view of the matter, this Court would permit the petitioner to withdraw this writ application in order to enable it to move before the arbitral Tribunal. If the petitioner moves before the arbitral Tribunal within a period of one month from today, the

arbitral Tribunal in keeping with the undertaking given by the learned counsel for the State, shall not non-suit the petitioner on account of delay/limitation.

The interim order passed by this Court on 26.11.2008 is hereby vacated and the respondents shall be entitled to encash the amount covered by National Savings Certificate (N.S.C.) of the petitioner. Such encashment, however, will be subject to the final result of the arbitration proceeding.

(Mihir Kumar Jha, J)

Sujit/-

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